

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 557 Contract Carriers

SPONSOR(S): Bovo, and others

TIED BILLS: IDEN./SIM. BILLS: SB 276

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Roads, Bridges & Ports Policy Committee		Cater	Miller
2)	Economic Development & Community Affairs Policy Council			
3)	Transportation & Economic Development Appropriations Committee			
4)	Full Appropriations Council on Education & Economic Development			
5)				

SUMMARY ANALYSIS

The bill provides rules and regulations for contract carriers transporting railroad employees in this state. Specifically, the bill:

- Requires contract carriers to hold a commercial drivers license;
- Requires contract carriers to perform alcohol and drug testing on drivers prior to employment, on suspicion of drug or alcohol use, and at least once a year at random;
- Limits duties of drivers employed by contract carriers to a maximum of 14 hours per shift, with a total of 12 hours of driving, with a minimum of 10 hours of rest between shifts;
- Requires contract carriers to keep logs, showing hours of service, driving time, and total time worked per shift, with the logs retained for a minimum of three years;
- Requires contract carriers to maintain liability insurance of \$1.5 million per vehicle and underinsured and uninsured motorists coverage at an equal amount;
- Permits the Department of Transportation (DOT) to adopt rules regulating contract carriers employed by railroad companies;
- Requires DOT to inform contract carriers transporting railroad employees in this state of the applicable requirements.

According to DOT, the bill may conflict with existing law regarding commercial vehicles, if the vehicle being used by the contract carrier qualifies as a commercial motor vehicle. There may also be potential enforcement issues related to identifying which non commercial motor vehicles are subject to the bill's provisions.

The bill may have an unquantifiable negative fiscal impact on the Department of Transportation in notifying contract carriers of the new requirement.

The bill may have a negative fiscal impact on current drivers for contract carriers if they do not currently possess commercial driver's licenses. If a contract carrier does not have the insurance required by the bill, the carrier will have to incur the cost to obtain the insurance.

The bill has an effective date of July 1, 2009.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Railroad Hours of Service

The Hours of Service Act of 1907¹ imposes a limit on the maximum hours of service a train crew can continuously operate trains while on duty. The purpose of the statute is to promote safety in operating trains by preventing the excessive mental and physical strain, which usually results from remaining too long at an exacting task.² A maximum shift consists of twelve hours. The Hours of Service Act also imposes mandatory time off duty before an employee can resume his operating duties. An employee who has worked a continuous twelve-hour shift must receive ten consecutive hours off duty. In addition, no employee can be called to operations duty unless he has received eight continuous hours of off-duty time in the preceding twenty-four hour interval.³

Because of the itinerant nature of railroad operations, the limitation on a train crew's hours of service presents special problems to railroads. When a train crew reaches its twelve-hour maximum, it must cease operating its assigned train. If the train has not yet reached its destination, the "expired" crew must "park" the train and wait for transportation to its designated terminal. The railroad must then transport another crew to the parked train to operate the train until it reaches its destination.

Deadheading" and "Dogcatching"

The movement of a crew from one point to another or to a train being hauled by vehicle transportation or by train is known as deadheading "deadheading"⁴. The transportation may be in the form of a railroad-owned van, another train going to the crew's designated terminal, or a third-party contract carrier hired to transport crew members to or from a parked train. Because of the lucrative nature of the business, cab companies and other carriers offer this service to railroads, often under a specific contract. The practice is known in the business as "dogcatching."⁵ Dogcatching is a service that may

¹ 45 U.S.C. ss. 61-66 (repealed 1964).

² *Chicago A&R Co. v. United States*, 38 S.Ct. 442,443 (1918).

³ 47 U.S.C. s. 62(a)(2).

⁴ Kansas Department of Transportation, Kansas Railroad Terms (<http://www.ksdot.org/burRail/rail/railroads/rterms.asp>).

⁵ Kansas Department of Transportation, Kansas Railroad Terms (<http://www.ksdot.org/burRail/rail/railroads/rterms.asp>).

be required on a round the clock basis. Due to the efficiency of integrated communications and standardized practices, a small number of businesses have specialized in providing this service to railroads.

Commercial Motor Vehicles

Current law defines a commercial motor vehicle (CMV) as any self-propelled or towed vehicle used on the public highways in commerce to transport passengers or cargo, if such vehicle:

- Has a gross vehicle weight rating of 10,000 pounds or more;
- Is designed to transport more than 15 passengers, including the driver; or
- Is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act,⁶ as amended.⁷

The regulation of CMVs and their drivers occurs through a combination of federal and state laws. The Motor Carrier Safety Improvement Act of 1999, established the Federal Motor Carrier Safety Administration (FMCSA) within the United States Department of Transportation (USDOT) to reduce crashes, injuries and fatalities involving large trucks and buses. Federal regulations adopted by the FMCSA provide general applicability, definitions, requirements and information for persons subject to the law. Specifically, the federal motor carrier safety regulations are applicable to “all employers, employees, and commercial motor vehicles, which transport property or passengers in interstate commerce.”⁸

The federal regulations have been codified in Florida law, specifically s. 316.302, F.S., which subjects all owners and drivers of CMVs engaged in interstate commerce and operated on public roadways to the rules and regulations contained in 49 Code of Federal regulations Parts 382, 385, and 390 through 397, which address the following areas:

- Controlled substances and alcohol use and testing (382);
- Safety fitness procedures (385);
- Federal motor carrier safety regulations; general (390);
- Qualifications of driver and longer combination vehicle driver instructors (391);
- Driving of commercial vehicles (392);
- Parts and accessories necessary for safe operation (393);
- Hours of service of drivers (395)
- Inspection, repair, and maintenance (396); and
- Transportation of hazardous materials; driving and parking rules (397).

Under s. 316.302, F.S., the Florida Department of Transportation’s (DOT) Motor Carrier Compliance Office's (MCCO) enforces state and federal laws and agency rules to ensure trucks and buses operating in Florida:

- are mechanically sound,
- are properly licensed,
- do not exceed size and weight limits, and
- are driven by properly qualified, licensed drivers operating their vehicles in a safe manner.⁹

Currently DOT is authorized to conduct compliance reviews for the purpose of determining whether CMVs are compliant with all safety requirements contained in Florida law.¹⁰ The MCCO officers

⁶ 47 U.S.C. ss. 1801 et seq.

⁷ Section 316.003(26), F.S.

⁸ 49 C.F.R. s. 390.3

⁹ Section 316.302, F.S.

perform vehicle safety inspections to determine whether commercial drivers are appropriately licensed, are not under the influence of drugs or alcohol, have maintained required logbooks of their hours of service, and are not operating their vehicles in an unsafe manner. Safety inspections can include examination of vehicle parts such as brakes, lights, and safety equipment and, if carried onboard, the packaging and labeling of hazardous materials. The section also requires the display of certain information (placarding) on the side of the power unit of certain commercial vehicles to comply with federal and state hazardous material requirements.

Commercial Driver Licenses (CDL)

Under current law, drivers of commercial motor vehicles are required to have a commercial driver's license and follow the safety regulations applicable to commercial motor vehicles.¹¹

Proposed Changes

The bill amends s. 316.302, F.S. to create a new section only applicable to contract carriers transporting railroad employees within the state. The bill requires:

- The contract carrier's drivers to have a commercial driver's license.
- The contract carrier to perform alcohol and drug tests on drivers before employment, on suspicion of drug or alcohol use, and randomly at least once every 365 days.
- Drivers not to perform duties in excess of 14 hours per shift, with a total of 12 hours of driving time, and have a minimum of 10 hours of rest between shifts.
- The contract carriers to keep logs, signed weekly by the drivers and the employer, showing hours of service and recording time on duty, driving time, and total time worked per shift. The logs are required to be kept for a minimum of three years.
- Requires to contract carrier to maintain a minimum vehicle liability insurance coverage of \$1.5 million per vehicle and equivalent uninsured and underinsured motorist coverage.

DOT may adopt rules to administer this section. DOT is also required to inform contract carriers transporting railroad employees in this state of the applicable requirements and statutes. According to DOT, it has no method of identifying contract carriers transporting railroad employees in order to notify them of the change in the law.

If a contract carrier transporting railroad employees also falls under the commercial motor vehicle statute (i.e. the vehicle is designed to carry 15 or more passengers) the contract carrier and the commercial motor vehicle requirements appear to conflict.¹² It may be difficult for the contract carrier to comply with both sets of requirements. For example, the hours of service requirements for commercial motor vehicles carrying passengers are that a driver may not drive after:

- 10 hours driving time;
- 15 hours on-duty time;
- 60 hours on-duty time in seven consecutive days; or
- 70 hours on-duty time in eight consecutive days if the company operates every day of the week.¹³

DOT points out that enforcement may be problematic since the bill's requirements relate to carriers and their drivers not operating commercial vehicles. DOT's MCCO's primary duty is enforcing regulations

¹⁰ Section 316.302, F.S.

¹¹ Sections 322.54, F.S., and 322.57, F.S.

¹² If a commercial motor vehicle driver is going to transport more than 15 people (14 plus the driver) the driver must obtain a "passenger endorsement" on their license.

¹³ Department of Transportation, Commercial Motor Vehicle Manual. 2006 Edition 47 C.F.R. s. 395.5

related to commercial motor vehicles. Commercial motor vehicles are generally readily identifiable, on sight, to those officers and to the general law enforcement community. There appears to be no method to easily identify contract carriers and drivers operating non-commercial vehicles, since a business logo on the vehicle may not identify it as owned and operated by contract carriers and their drivers.

Since there is no ready identification of vehicles operated by contract carriers transporting railroad employees, the only enforcement may be if law enforcement stops the vehicle for a traffic violation. Then, unless the driver of the vehicle volunteers that the vehicle is a carrier subject to the bill's requirements, law enforcement will have no way of knowing if the vehicle is subject to these requirements.

The bill has an effective date of July 1, 2009.

B. SECTION DIRECTORY:

Section 1 Amends s. 316.302, F.S., providing requirements for contract carriers transporting railroad employees.

Section 2 Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

See FISCAL COMMENTS below.

FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

B. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Drivers for contract carrier that currently do not have a commercial driver's license would have to obtain one. The current fee for a CDL is \$50 and the process includes written and road tests.¹⁴

The bill requires the contract carrier to maintain a minimum liability insurance coverage of \$1.5 million per vehicle and equivalent uninsured and underinsured motorist coverage. Contract carriers who currently do not have that amount of insurance coverage will incur the expense of obtaining it.

C. FISCAL COMMENTS:

According to DOT, it does not expect a fiscal impact related to rule-making. The fiscal impact of notifying contract carriers of the change in the law is unquantifiable, since it does not have a way of knowing which parties the law would apply to in order to notify them.

¹⁴ Florida CDL Handbook, <http://www.lowestpricetrafficschool.com/handbooks/cdl/en> (February 17, 2009).

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not affect county or municipal government.

2. Other:

None

B. RULE-MAKING AUTHORITY:

The bill authorizes, but does not require, DOT to adopt rules to administer statutory provisions related to contract carriers transporting railroad employees. Since the bill expressly provides the requirements imposed on contract carriers and their drivers, DOT believes that rulemaking is unnecessary.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Technical Drafting Issues

The bill has some technical drafting issues which may need to be addressed:

1. The bill amends s. 316.302, F.S., which expressly applies to commercial motor vehicles. This may be inappropriate to the extent that these apply to the carriers and drivers of non-commercial motor vehicles.
2. On line 21, the word "section" should be changed to "subsection."
3. The title (line 7) indicates that the bill requires DOT to adopt rules regulating contract carriers, however, the bill (line 40), provides that DOT may adopt rules to administer this subsection. The bill may need to be amended to address this inconsistency.

Implementation Comments

The bill has two issues identified by DOT which may impact efficient implementation:

1. Lines 42-44 require DOT to inform contract carriers transporting railroad employees in this state of the new statutory requirements. As mentioned previously, there appears to be no method to easily identify contract carriers and drivers operating non-commercial vehicles, since a business logo on the vehicle may not identify it as owned and operated by contract carriers and their drivers.
2. According to DOT, the bill may conflict with current laws regarding commercial motor vehicles. This may make it confusing and difficult for contract carriers operating commercial motor vehicles to comply with all of the requirements of the bill. However, it appears the bill is intended to apply to vehicles and drivers who are not subject to commercial motor vehicle and commercial driver license requirements.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES